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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| MARIA ISABEL S., Appellant, v. ROBERT S. and MARIA ESPERANZA S., Appellees. | 2 CA-JV 2011-0107<br>DEPARTMENT B<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 28, Rules of Civil Appellate Procedure |

APPEAL FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause No. SV201100006

Honorable D. Corey Sanders, Judge Pro Tempore

AFFIRMED

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E S P I N O S A, Judge.

**¶1** After a contested severance hearing, the juvenile court terminated the parental rights of Maria S. to her daughter, Maria Esperanza S. (Esperanza),[1] who was born in 1996, granting the petition filed in June 2011 by Esperanza's father, Robert S. The court terminated Maria's rights on the ground of abandonment, *see* A.R.S. § 8-533(B)(1), and found termination in Esperanza's best interests. On appeal, Maria contends there was insufficient evidence to support the court's ruling based on abandonment. She also challenges the court's finding that termination was in Esperanza's best interests. For the reasons stated below, we affirm.

**¶2** A juvenile court may terminate a parent's rights if it finds by clear and convincing evidence that any statutory ground for severance exists and if it finds by a preponderance of the evidence that severance is in the child's best interests. A.R.S. §§ 8-533(B), 8-537(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). "On review, . . . we will accept the juvenile court's findings of fact unless no reasonable evidence supports those findings, and we will affirm a severance order unless it is clearly erroneous." *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). We will affirm the court's ruling "'unless we must say as a matter of law that no one could reasonably find the evidence [supporting statutory grounds for termination] to be clear and convincing.'" *Denise R. v. Ariz. Dep't of Econ. Sec.*, 221

[1]A guardian ad litem was appointed to represent Esperanza, also known as Hope, who has Down's syndrome. *See* A.R.S. § 8-531(7). Esperanza has two older siblings who are not parties to this appeal.

Ariz. 92, ¶ 10, 210 P.3d 1263, 1266 (App. 2009), *quoting Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955) (alteration in *Denise R.*). On appeal, we view the evidence in the light most favorable to upholding the juvenile court's ruling. *Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000).

**¶3** Section 8-531(1), A.R.S., defines abandonment as

> the failure of a parent to provide reasonable support and to maintain regular contact with the child, including providing normal supervision. Abandonment includes a judicial finding that a parent has made only minimal efforts to support and communicate with the child. Failure to maintain a normal parental relationship with the child without just cause for a period of six months constitutes prima facie evidence of abandonment.

**¶4** Maria contends there was insufficient evidence she abandoned Esperanza, asserting there was "clear and convincing [evidence] that [Robert] had made every possible effort to interfere with [Maria's] rights to visit her children."[2] However, even assuming Robert made it difficult for Maria to communicate with Esperanza, the evidence nonetheless shows that Maria made minimal, if any, efforts to overcome that obstacle.

**¶5** After Maria and Robert were divorced in 1998, Maria left Arizona for many years. She had not seen Esperanza for at least five years before the severance hearing. The 1998 divorce decree granted Robert custody of Esperanza and her siblings, and

[2]We admonish counsel for both parents to refrain from citing criminal cases as authority for the standard of review in severance matters.

provided that Maria was not required to pay child support "until such time [she] becomes gainfully employed." In 2001, Robert obtained an emergency injunction for supervised visitation after he learned Maria was using illegal drugs in front of the children and locking them in the closet while she went out to parties. The order permitted Maria to object and request a hearing, which she did not do. Although Maria testified that she never received the injunction, she nonetheless contends on appeal that it "restricted" her visitation rights with Esperanza. Esperanza regularly visited her maternal grandparents ("grandparents") until approximately two or three years before the severance hearing, when Robert no longer permitted her to do so. Esperanza lives with Robert and his current wife, Melissa, whom Robert married in 2005.

**¶6** Melissa testified that she cares for Esperanza as her "mother," and is involved with Esperanza's schooling, therapy, and day-to-day care. The maternal grandmother testified that Maria never asked for Robert's address or telephone number, but "if she wanted to know something about the kids, I would tell her." She also testified that although Maria occasionally spoke with Esperanza by telephone when Esperanza was at her grandmother's home, this did not occur during the two years before the severance hearing, after Robert prohibited visits with the grandparents.

**¶7** Notably, Maria herself testified that she had not had any "face[-]to[-]face" contact with Esperanza for 6.5 years, that she had sent money to Esperanza "[a]bout two years ago," and that other than instances when her sons would put Esperanza on the telephone, she had made no efforts to contact her daughter. She explained that she

"wanted some time under [her] belt as far as being drug free and . . . employment and stuff . . . [a]nd . . . [she was] not real keen on the court proceedings and how everything works." Esperanza's eighteen- and nineteen-year-old brothers, who are opposed to severance, also testified that Maria had not seen Esperanza for years. Accordingly, other than a few telephone calls more than two years before the severance hearing, it is undisputed that Maria had not seen or had any contact with Esperanza for many years prior to the hearing.

**¶8** Additionally, although she was employed over the years, Maria did not provide any financial support for Esperanza. Maria testified she had contacted the "warehouse" (presumably the child support payment clearinghouse), but was told she owed no back child support. Maria thus asserts her failure to comply with her child support obligation is "understandable." Moreover, although Maria testified she had sent Esperanza a few cards and gifts over the years, she sent them to the maternal grandmother rather than Robert.

**¶9** At the severance trial, the juvenile court noted that Maria had not done anything to enforce her parenting rights, as set forth in the divorce decree, nor had she notified Robert that she had been employed for many years, as required under the decree. The court thus concluded:

> I'm finding as a fact . . . that it's been approximately six to six and a half years since you've actually provided any type of normal supervision and that would have been, even at that time, only for a period of an afternoon. And also that you have had some telephonic communication with the child . . .

> no more recently than two years ago. To me that . . . lack of normal parental supervision and lack of regular contact for that period of time clearly falls under the definition of abandonment as contemplated, and also that there has been no child support paid from the inception of the decree in 1998.
>
> . . . .
>
> The testimony also is unequivocal that the anticipation is that the stepmother, with the father's consent, does anticipate an adoption of [Esperanza], and that by case law becomes the definition of best interest.

**¶10** Robert established a prima facie case of abandonment based on Maria's "[f]ailure to maintain a normal parenting relationship with [Esperanza] without just cause for a period of six months" before the severance hearing. A.R.S. § 8-531(1). To the extent Maria suggests she was prevented from communicating with Esperanza due to Robert's conduct or her lack of familiarity with the manner in which the courts operate, we do not find this argument persuasive because Maria made no efforts, let alone unsuccessful efforts, to visit or support Esperanza. Maria further argues it is "to her credit" that she did not attempt to see Esperanza until she had overcome her drug problems and was ready to adequately parent her. Unfortunately, Esperanza's need for a mother continued while Maria was addressing her drug issues, a factor the juvenile court was entitled to and presumably did consider. Moreover, Maria testified she had been drug-free for five years before the severance hearing, yet she did not contact Esperanza during that time period.

**¶11** Maria also argues the evidence was insufficient to support the juvenile court's finding that termination was in Esperanza's best interests, asserting there was no evidence Maria was "in any way likely to be harmful" to Esperanza. To support the finding that termination is in a child's best interests, a preponderance of the evidence must show the child either will benefit from the severance or be harmed if the parental relationship continues. *See Mary Lou C. v. Ariz. Dep't of Econ. Sec.*, 207 Ariz. 43, ¶ 19, 83 P.3d 43, 50 (App. 2004). There was ample evidence to support the court's best interests finding here. Robert testified that Esperanza, who functions "a little bit older than a 6- or 7-year-old," gets very "emotional" and confused at times, and when her routine is disrupted she will "start[] talking to herself." He explained she would return confused after visits to the grandparents' home because they would tell her Melissa was her stepmother and Maria was her real mother, although she "never really got to be around her." He also testified Esperanza refers to Melissa, who wants to adopt her, as her "mom," and he thought it would be in Esperanza's best interests to terminate Maria's parental rights because "it would be too confusing for [Esperanza] to have [Maria] come back into her life after being gone so long. And [it would] be hard on her." In turn, Maria testified that termination was not in Esperanza's best interests because "every child should know who their actual parents are."

**¶12** The court noted that Melissa was willing to adopt Esperanza, a fact it determined to be in her best interests. *See In re Maricopa Cnty. Juv. Action No. JS-501904*, 180 Ariz. 348, 352, 884 P.2d 234, 238 (App. 1994) (juvenile court could

consider whether current adoptive placement existed, whether child adoptable, or whether "the child[] would benefit from termination of the parent-child relationship . . . because the children then would be legally free to be adopted."). Because reasonable evidence supports the court's best interests finding that adoption, and by inference, permanency and consistency in the only home Esperanza has ever known, would be in Esperanza's best interests, we will not disturb it.

**¶13** Accordingly, the juvenile court's order terminating Maria's parental rights to Esperanza is affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge